



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R2–ES–2020–0065; FXES111602C0000–212–FF02ENEH00]

Application for an Enhancement of Survival Permit; Draft Candidate Conservation

Agreement with Assurances for the Dunes Sagebrush Lizard (*Sceloporus*

arenicolus); Andrews, Gaines, Crane, Ector, Ward, and Winkler Counties, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice advises the public that Canyon Environmental, LLC (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit (permit) supported by the draft *Candidate Conservation Agreement with Assurances for the Dunes Sagebrush Lizard (Sceloporus arenicolus)* (CCAA) in Andrews, Gaines, Crane, Ector, Ward, and Winkler Counties, Texas. The applicant has applied to the Service for the permit pursuant to the Endangered Species Act. The requested permit, if approved, would authorize incidental take of the dunes sagebrush lizard (DSL), resulting from activities completed pursuant to the draft CCAA. If approved, the requested permit would become effective should the DSL become federally listed during the life of the permit and CCAA. The proposed permit would have a term of up to 23 years. We also announce the availability of a draft environmental assessment (EA) that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act. We are making the permit application package, including the draft CCAA and draft EA, as well as the issuance criteria for the requested permit, available for public review and comment.

DATES: *Submission of comments:* We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

ADDRESSES: Obtaining Documents for Review: You may obtain copies of the permit application, draft CCAA, draft EA, or other related documents in the following formats:

Internet:

- <http://www.regulations.gov> (search for Docket No. FWS–R2–ES–2020–0065)
- <http://www.fws.gov/southwest/es/AustinTexas/>

Hard copies or CD–ROM:

- Contact Field Supervisor by phone or U.S. mail (see **FOR FURTHER INFORMATION CONTACT**; reference the notice title and docket number FWS–R2–ES–2020–0065).

Email: fw2_HCP_Permits@fws.gov

Reviewing Public Comments: View submitted comments on <http://www.regulations.gov> in Docket No. FWS–R2–ES–2020–0065.

Submitting Comments: You may submit written comments by one of the following methods:

Internet: <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R2–ES–2020–0065.

Hard Copy: Submit by U.S. mail to Public Comments Processing, Attn: FWS–R2–ES–2020–0065; U.S. Fish and Wildlife Service, MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you submit comments by only the methods described above. We will post all information received on <http://www.regulations.gov>. This generally means we will post any personal information you provide us (see **Public Availability of Comments**).

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field

Supervisor, by mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758; via phone at 512-490-0057, ext. 248.; or via the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), make available the draft *Candidate Conservation Agreement with Assurances for the Dunes Sagebrush Lizard (Sceloporus arenicolus)* (CCAA) in Andrews, Gaines, Crane, Ector, Ward, and Winkler Counties, Texas. Canyon Environmental, LLC (applicant) has applied for an enhancement of survival permit (permit). If approved, the requested permit would become effective and authorize incidental take of the dunes sagebrush lizard (*Sceloporus arenicolus*; DSL) should the DSL become federally listed during the life of the permit and CCAA under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The permit would authorize incidental take of the DSL resulting from activities covered by the draft CCAA (e.g., oil and gas exploration and development, sand mining, renewable energy development and operations, pipeline construction and operations, local government activities, agricultural activities, general construction activities), and incidental take resulting from conservation, research, and monitoring activities completed pursuant to the draft CCAA. These activities of the CCAA, collectively, are intended to meet the net conservation benefit standard.

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) we have prepared a draft environmental assessment (EA) to evaluate the permit application. We are accepting comments on the permit application and draft EA.

In addition, we advise the public that the applicant has developed a draft CCAA

which describes the measures the applicant has volunteered to implement in an effort to meet the issuance criteria for a 10(a)(1)(A) permit associated with a CCAA. Prior to a permit decision, the Service must conduct an analysis to determine if the draft CCAA has met the criteria for the issuance of the requested permit and does not have any disqualifying factors that would prevent the permit from being issued. The issuance criteria for CCAAs are found at 50 CFR 17.22(d)(2) and 50 CFR 17.32(d)(2), and are as follows:

1. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Candidate Conservation Agreement with Assurances (50 CFR §§ 17.22(d)(2)(i) and 17.32(d)(2)(i)).
2. The implementation of the terms of the CCAA is reasonably expected to provide a net conservation benefit to the affected covered species by contributing to the conservation of the species included in the permit, and the CCAA otherwise complies with the Candidate Conservation Agreement with Assurances policy (81 FR 95164; 50 CFR §§ 17.22(d)(2)(ii) and 17.32(d)(2)(ii)).
3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of the survival and recovery in the wild of any species (50 CFR §§ 17.22(d)(2)(iii) and 17.32(d)(2)(iii)).
4. Implementation of the terms of the Candidate Conservation Agreement with Assurances is consistent with applicable Federal, State, and Tribal laws and regulations (50 CFR §§ 17.22(d)(2)(iv) and 17.32(d)(2)(iv)).
5. Implementation of the terms of the Candidate Conservation Agreement with Assurances will not be in conflict with any ongoing conservation programs for species covered by the permit (50 CFR §§ 17.22(d)(2)(v) and 17.32(d)(2)(v)).

6. The Applicant has shown capability for and commitment to implementing all of the terms of the Candidate Conservation Agreement with Assurances (50 CFR 17.22(d)(2)(vi) and 17.32(d)(2)(vi)).

The Service has not yet reached a determination whether the draft CCAA meets the above permit issuance criteria. We are accepting comments on the permit relative to the above criteria to assist in our evaluation including suggested revisions to assist in satisfying the above criteria.

Background

Section 9 of the ESA and our implementing regulations at 50 CFR part 17 prohibit the “take” of fish or wildlife species listed as endangered or threatened. Take is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct” (16 U.S.C. 1538(19)). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Regulations governing such take of endangered and threatened species are found at 50 CFR 17.21–22 and 50 CFR 17.31–32, respectively.

Proposed Action

The proposed action is the issuance of a 10(a)(1)(A) enhancement of survival permit (permit) to Canyon Environmental, LLC (applicant) and approval of the proposed *Candidate Conservation Agreement with Assurances for the Dunes Sagebrush Lizard (Sceloporus arenicolus)* (CCAA). The draft CCAA would operate under a programmatic structure. There would be a single permit holder (the applicant) and a single CCAA under which multiple participants could be enrolled through certificates of inclusion (CIs). Individual oil and gas, sand mining, renewable energy, pipeline, local government, and agricultural entities interested in participating in the CCAA and seeking incidental

take coverage under the permit could enroll projects under the CCAA and permit via a CI. Coverage under the permit would only apply to oil and gas exploration and development, sand mining, renewable energy development and operations, pipeline construction and operations, local government activities, agricultural activities, and general construction activities within the CCAA permit area (covered activities) on and/or associated with enrolled properties in the CCAA through execution of a CI in compliance with all elements of the CCAA and underlying permit. The conservation strategy of the CCAA will be completed by the applicant, with input from the Service and the Adaptive Management Committee. Specific conservation measures include avoidance, minimization, and mitigation and vary for each enrolled industry sector. New surface disturbance in DSL habitat triggers the payment of habitat conservation fees and the implementation of conservation measures to minimize and mitigate for the impacts of the disturbance. The applicant intends to use the conservation fees to implement additional conservation measures consistent with the conservation strategy. The 2020 DSL CCAA is a stand-alone voluntary conservation program for the net conservation benefit of the DSL although implementation intends to complement other DSL conservation efforts, including the Texas Conservation Plan, Natural Resource Conservation Service programs, and the New Mexico conservation programs.

As stated in the draft CCAA, the requested term of the permit would be up to 23 years from the date the permit is signed and the CCAA is approved. The permit could be issued for a shorter duration. The permit, and subsequent CIs, would become effective and authorize incidental take of the DSL should the DSL become federally listed during the life of the permit and CCAA, as long as the applicant and enrolled participants are in compliance with the terms and conditions of the CCAA, permit, and individual CIs.

The permit, and subsequent CIs, would authorize incidental “take” of the DSL associated with implementation of covered activities. Because take of individual DSL

would be difficult to detect, take of DSL would be quantified using the acres of suitable DSL habitat impacted through implementation of covered activities by participants in the CCAA. As proposed in the CCAA, the permit could authorize incidental take of DSL associated with impacts to up to 34,690 acres of suitable DSL habitat within the Plan Area which the permit application estimates as approximately 12 percent of modeled DSL habitat within Texas.

The applicant has developed, and proposes to implement, the CCAA. This CCAA is a conservation strategy that includes such actions and measures the applicant and enrolled participants have voluntarily agreed to undertake. These actions and measures include potentially acquiring conservation easements, and the implementation of selected avoidance and minimization measures to reduce habitat loss and fragmentation in high and intermediate suitability DSL habitat areas. As stated in the issuance criteria, the implementation of the conservation strategy must be reasonably expected to provide a net conservation benefit and to improve the status of the species. Status refers to the populations of the species on the enrolled property, or in this case the covered area in the CCAA.

Alternatives

At this time, we are considering one alternative to the proposed action as part of this process, the No Action Alternative. However, the proposed action could also be modified either in response to public and stakeholder comments or to achieve issuance criterion.

Under No Action Alternative, the Service would not issue the permit, and therefore this CCAA would not be available.

Next Steps

We will evaluate the permit application, draft CCAA, draft EA, associated documents, and comments we receive during the comment period to determine whether

the permit application meets the requirements of ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the CCAA and issue the permit under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) to the applicant in accordance with the terms of the CCAA and specific terms and conditions of the authorizing permit. We will not make our final decision until after the 30-day comment period ends, and we have fully considered all comments received during the public comment period.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders.

Regional Director, Southwest Region,

U.S. Fish and Wildlife Service.

